

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 121

Introduced by Senator Evans

January 18, 2013

An act to add Chapter 7.5 (commencing with Section 750) to Division 1 of Title 1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 121, as amended, Evans. Corporations: political activities: shareholder disclosure.

Existing law, the General Corporation Law, provides for the regulation of corporations. Under existing law, the board of directors of a corporation is required, except as specified, to send an annual report to shareholders containing, among other things, a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected officers, candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received and the identities of donors.

This bill would require a corporation, as defined, that *reasonably believes it has one or more* shareholders located in this state and that makes a contribution or expenditure, as defined, to, or in support of or in opposition to, a candidate, ballot measure campaign, or a signature-gathering effort on behalf of a ballot measure, political party, or political action committee to issue a report on the political

expenditures of the corporation in the previous fiscal year, and to notify shareholders not less than 24 hours prior to each political contribution during the fiscal year, by specified means, including posting the report and notification on the corporation's Internet Web site, if any.

This bill would provide for a civil cause of action for damages by specified shareholders against a corporation for willful or reckless violations of the bill's provisions and would specify a prevailing shareholder's remedies. The bill would require a corporation to maintain records that include copies of the reports on its political activities for 5 years, and to make copies of these reports available to the Secretary of State upon request. The bill would also state findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Corporations make substantial political contributions and
- 4 expenditures to support and oppose candidates, ballot measures,
- 5 political parties, and political causes. However, decisions to use
- 6 corporate funds for political contributions and expenditures are
- 7 usually made by corporate boards and executives, rather than the
- 8 shareholders who own the corporations.
- 9 (b) Shareholders have a right to know how corporations are
- 10 spending shareholder funds to make political contributions and
- 11 expenditures to support or oppose candidates, ballot measures,
- 12 political parties, and political causes.
- 13 (c) Most shareholders have no means by which they may learn
- 14 of, influence, or object to the political activities of the corporations
- 15 in which they have invested. Moreover, most shareholders have
- 16 no means by which they may influence the use of their invested
- 17 funds to make political contributions or expenditures to support
- 18 candidates, ballot measures, political parties, or political causes
- 19 to which the shareholders are opposed.
- 20 (d) By limiting the extent to which corporate political
- 21 contributions and expenditures may be regulated, the United States
- 22 Supreme Court, through its decision in *Citizens United v. Federal*
- 23 *Election Com'n* (2010) 130 S.Ct. 876, has increased the need for

1 greater accountability of corporations to their shareholders with
2 regard to political contributions and expenditures.

3 (e) The Citizens United decision was handed down in January
4 2010, but the debate over whether the invested funds of
5 shareholders should be used for political activities without their
6 consent is not a new one. In 1905, President Theodore Roosevelt
7 said, “All contributions by corporations to any political committee
8 or for any political purpose should be forbidden by law; directors
9 should not be permitted to use stockholders’ money for such
10 purposes.”

11 (f) It is the intent of the Legislature in enacting this act to inform
12 shareholders and the public with regard to how corporations are
13 spending funds to make political contributions and expenditures
14 benefiting candidates, political parties, and political causes.

15 SEC. 2. Chapter 7.5 (commencing with Section 750) is added
16 to Division 1 of Title 1 of the Corporations Code, to read:

17
18 CHAPTER 7.5. POLITICAL ACTIVITY
19

20 750. As used in this chapter, the following terms have the
21 following meanings:

22 (a) “Ballot measure” means a constitutional amendment or other
23 proposition that is submitted to a popular vote at an election by
24 action of a legislative body, or that is submitted or is intended to
25 be submitted to a popular vote at an election by initiative,
26 referendum, or recall procedure, whether or not it qualifies for the
27 ballot.

28 (b) (1) “Contribution” or “expenditure” includes any monetary
29 and nonmonetary political contributions and expenditures not
30 deductible under Section 162(e)(1)(B) of the Internal Revenue
31 Code of 1986 (26 U.S.C. Sec. 162(e)(1)(B)), including, but not
32 limited to, contributions to, or expenditures on behalf of, political
33 candidates, political parties, political committees, and other
34 political entities organized and operating under Section 527 of the
35 Internal Revenue Code of 1986 (26 U.S.C. Sec. 527), any portion
36 of any dues or similar payments made to any tax exempt
37 organization that is used for an expenditure or contribution that,
38 if made directly by the corporation, would not be deductible under
39 Section 162(e)(1)(B) of the Internal Revenue Code of 1986, any
40 contribution or expenditure, as those terms are defined in Section

1 302 of the Federal Election Campaign Act of 1971 (2 U.S.C. Sec.
2 431), and any contribution or expenditure as defined under the
3 Political Reform Act of 1974 (Title 9 (commencing with Section
4 81000) of the Government Code).

5 The terms also include any direct or indirect payment,
6 distribution, loan, advance, deposit, or gift of money, or any
7 services, or anything of value, except a loan of money by a national
8 or state bank made in accordance with the applicable banking laws
9 and regulations and in the ordinary course of business, to any
10 candidate, campaign committee, or political party or organization,
11 in connection with any election to any office.

12 (2) The terms “contribution” or “expenditure” do not include
13 any of the following:

14 (A) Communications by a corporation to its stockholders and
15 executive or administrative personnel and their families or by a
16 labor organization to its members and their families on any subject.

17 (B) Nonpartisan registration and get-out-the-vote campaigns
18 by a corporation aimed at its stockholders and executive or
19 administrative personnel and their families or by a labor
20 organization aimed at its members and their families.

21 (C) The establishment, administration, and solicitation of
22 contributions to a separate segregated fund to be utilized for
23 political purposes by a corporation, labor organization, membership
24 organization, cooperative, or corporation without capital stock.

25 (c) “Corporation” means any of the following:

26 (1) A publicly held corporation with shareholders.

27 (2) An entity in which a corporation with shareholders has an
28 equity interest.

29 (3) The parent corporation of a subsidiary or affiliate of a
30 corporation with shareholders.

31 (d) “Political activity” means a contribution or expenditure made
32 to, or in support of, or in opposition to, a candidate, ballot measure
33 campaign, signature gathering effort on behalf of a ballot measure,
34 political party, or political action committee.

35 (e) “Public corporation” means a corporation that is required to
36 file periodic reports pursuant to Section 13(a) or 15(d) of the federal
37 Securities Exchange Act of 1934, as amended (15 U.S.C. Secs.
38 78m(a) and 78o(d)).

39 (f) “Shareholder” has the same meaning as set forth in Section
40 185.

1 751. (a) A corporation that *reasonably believes it* has one or
2 *more* shareholders ~~with legal residency who reside~~ in California
3 and that engages in political activity shall do all of the following:

4 (1) Issue a report on the political expenditures of the corporation
5 in the previous fiscal year. The report shall include all of the
6 following:

7 (A) A description of the political activities.

8 (B) The name of the person, candidate, committee, or political
9 party, or a description of the political cause, to which each
10 contribution or expenditure was made.

11 (C) The aggregate amount of the contribution or contributions
12 and expenditure or expenditures for each candidate, ballot measure
13 campaign, signature gathering effort on behalf of a ballot measure,
14 political party, or political action committee.

15 (D) If a contribution or expenditure was made in support of, or
16 in opposition to, a candidate, the office sought by the candidate
17 and the political party affiliation of the candidate.

18 (E) If a contribution or expenditure was made for or against a
19 ballot measure, ~~a description~~ *title and summary* of the ballot
20 measure and a statement as to whether the contribution or
21 expenditure was made in support of, or in opposition to, the ballot
22 measure.

23 (2) If the corporation maintains an Internet Web site, the
24 corporation shall post the report required by paragraph (1) on its
25 Internet Web site.

26 (3) Notify its shareholders not less than 24 hours prior to each
27 political contribution during the fiscal year. Notification shall be
28 made by mail, email, posting on its Internet Web site, or any other
29 means regularly used in its course of business.

30 (b) A public corporation is deemed to have complied with
31 paragraph (1) of subdivision (a) if it includes the report required
32 by that paragraph in its annual report to shareholders under a
33 separate caption entitled “Political Activity Report,” and if the
34 annual report is provided to shareholders within 90 days of the
35 fiscal yearend.

36 (c) This section shall not apply to a corporation’s use of
37 segregated accounts, political action committees, or political
38 committees, as long as the funds in those accounts or committees
39 come from shareholders, board members, or employees of the

1 corporation who, as individuals, choose to contribute to those
2 accounts or committees.

3 752. (a) A corporation subject to Section 751 shall maintain
4 records of its political activities, including the report required by
5 subdivision (a) of Section 751, for a minimum of five years.

6 (b) Upon a request by the Secretary of State, a corporation shall
7 file with the Secretary of State a copy of each report produced
8 pursuant to subdivision (a) of Section 751.

9 753. No provision of Section 751 shall be construed to relieve
10 a corporation of its obligations under existing law, including, but
11 not limited to, the following: *state or federal law*.

12 ~~(a) Section 604, or a successor statute or regulation.~~

13 ~~(b) A state or federal statute or regulation that regulates the~~
14 ~~solicitation of proxies.~~

15 ~~(c) With respect to a corporation with an outstanding class of~~
16 ~~securities registered pursuant to Section 12 of the federal Securities~~
17 ~~Exchange Act of 1934, as amended (15 U.S.C. Sec. 781), the proxy~~
18 ~~rules promulgated under that act.~~

19 754. (a) A willful or reckless violation of Section 751 by a
20 corporation shall create a civil cause of action for damages against
21 the corporation that may be brought by any shareholder of the
22 corporation who held a share in the corporation at the time of the
23 political contribution or expenditure. A prevailing shareholder
24 shall be entitled to the information that was not reported or
25 disclosed in compliance with Section 751, as well as reasonable
26 attorney's fees and costs.

27 (b) The remedies provided in this section are in addition to any
28 other rights or remedies available under any other provision of
29 law.

30 *(c) A claim brought under this section shall be brought not later*
31 *than two years after the accrual of the cause of action.*

32 755. The provisions of this chapter are severable. If any
33 provision of this chapter or its application is held invalid, that
34 invalidity shall not affect other provisions or applications that can
35 be given effect without the invalid provision or application.